

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ISABEL VALENCIA-PEREZ,

Plaintiff,

v.

DARYL SCHERMERHORN, in his
individual capacity and "JANE DOE"
SCHERMERHORN, as a marital
community; STEVEN MALPEZZI, in
his individual capacity and "JANE DOE"
MALPEZZI, as a marital community;
THE UNITED STATES OF AMERICA,

Defendants.

No. C 08-0920 RSM

**STIPULATION AND AGREEMENT
FOR COMPROMISE SETTLEMENT
AND RELEASE; [PROPOSED] ORDER**

THE PARTIES AND THEIR ATTORNEYS OF RECORD HEREBY SUBMIT THE
FOLLOWING STIPULATION AND AGREEMENT FOR COMPROMISE SETTLEMENT
AND RELEASE (the "Stipulation and Agreement"):

1. This Stipulation and Agreement is entered into by and between plaintiff Isabel
Valencia-Perez ("Plaintiff") and defendants Daryl Schermerhorn, in his individual capacity and
"Jane Doe" Schermerhorn, as a marital community; Steven Malpezzi, in his individual capacity
and "Jane Doe" Malpezzi, as a marital community; and the United States of America (the
"USA") (collectively, "Defendants").

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1 2. The parties to this Stipulation and Agreement do hereby agree to settle,
2 compromise and dismiss the above-captioned action ("This Action") under the terms and
3 conditions set forth herein.

4 3. The USA will pay Plaintiff the sum of Forty-eight thousand dollars and no cents
5 (\$48,000.00), which shall be in full settlement and satisfaction of any and all claims, demands,
6 rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and
7 all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to
8 property and the consequences thereof, resulting, and to result, from the facts, circumstances,
9 subject matter or allegations that gave rise to the above-captioned lawsuit, for which Plaintiff or
10 his heirs, executors, administrators or assigns, and each of them, now have or may hereafter
11 acquire against Defendants or Defendants' agents, servants or employees.

12 4. This Stipulation and Agreement is entered into by all parties for the purpose of
13 compromising disputed claims and avoiding the expenses and risks of litigation. This Stipulation
14 and Agreement is not, is not intended to be, and should not be construed as, an admission of
15 liability, fault, wrongdoing, or violation of law, rules, or regulations on the part of Defendants or
16 any of their predecessor or current agencies, employees, agents, attorneys, successors or assigns.

17 5. This Stipulation and Agreement may be pled as a full and complete defense to any
18 action or other proceeding that arises out of the claims released and discharged by this
19 Stipulation and Agreement, and/or the facts, circumstances, subject matter or allegations giving
20 rise to those claims, which are also released and discharged by this Stipulation and Agreement.

21 6. It is also agreed, by and among the parties, that the settlement amount of
22 Forty-eight thousand dollars and no cents (\$48,000.00) to be paid by the USA to Plaintiff
23 represents the entire amount of the compromise settlement and that the respective parties will
24 each bear their own costs, fees, and expenses and that any attorney's fees owed by Plaintiff will
25 be paid out of the settlement amount and not in addition thereto. Neither Plaintiff nor any of his
26 attorneys may make any additional claim for attorney's fees or other costs against Defendants or

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1 Defendants' agents, servants or employees.

2 7. Payment of the settlement amount will be made by a check payable to
3 "Davies Pearson, P.C." The check will be delivered to Plaintiff's attorney at the following
4 address:

5 Joseph M. Diaz
6 Davies Pearson, P.C.
7 920 Fawcett Avenue
P.O. Box 1657
Tacoma, Washington 98401

8 8. Plaintiff and his attorneys are responsible for payment of any taxes that may be
9 due on the settlement proceeds. Defendants make no representation as to any tax consequences
10 or liabilities Plaintiff or his attorney may incur as a result of this settlement. Defendants will not
11 withhold any taxes of any kind. The determination of Plaintiff's tax liability, if any, is a matter
12 solely between Plaintiff, his attorneys, the IRS and/or state and local tax authorities.

13 9. In consideration of the payment referred to in paragraphs 3 and 6 above, Plaintiff
14 agrees that he will, immediately upon execution of this Stipulation and Agreement, execute a
15 Stipulation of Dismissal, which stipulation shall dismiss with prejudice all claims that were
16 asserted or could have been asserted in This Action. The fully-executed Stipulation of Dismissal
17 will be held by counsel for Defendants and will not be filed with the Court until payment of the
18 sum referenced in paragraphs 3 and 6 herein is made. Plaintiff is advised that settlement checks
19 are sometimes not available for up to sixty (60) days after approval of the settlement by the
20 Court.

21 10. In consideration of the payment referred to in paragraphs 3 and 6 above, Plaintiff
22 hereby releases and forever discharges Defendants and any and all of Defendants' predecessor
23 and current agencies, officials, employees, agents, attorneys, successors and assigns from any and
24 all obligations, damages, liabilities, actions, causes of actions, claims and demands of any kind
25 and nature whatsoever, whether suspected or unsuspected, arising at law or in equity, arising
26 from or by reason of any and all known, unknown, foreseen or unforeseen injuries, and the

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1 consequences thereof, resulting from the facts, circumstances, subject matter or allegations that
2 gave rise to This Action.

3 11. The parties agree that this Stipulation and Agreement is intended to be a full and
4 final settlement of all claims arising out of the allegations set forth in Plaintiff's pleadings in This
5 Action. Plaintiff agrees to indemnify and hold harmless Defendants from any and all claims,
6 demands, obligations, liens, and lawsuits brought against Defendants, their agencies or
7 employees on account of the same subject matter that gave rise to This Action.

8 12. This Stipulation and Agreement shall constitute the entire agreement between the
9 parties, and it is expressly understood and agreed that the agreement has been freely and
10 voluntarily entered into by the parties hereto with the advice of counsel, who have explained the
11 legal effect of this Stipulation and Agreement. The parties further acknowledge that no
12 warranties or representations have been made on any subject other than as set forth in this
13 Agreement. This Stipulation and Agreement may not be altered, modified or otherwise changed
14 in any respect except by writing, duly executed by all of the parties or their authorized
15 representatives.

16 13. The parties agree that, should any dispute arise with respect to the implementation
17 of the terms of this Agreement, Plaintiff shall not seek to rescind the Agreement and pursue his
18 original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce this
19 Stipulation and Agreement in district court. The parties agree that the district court will retain
20 jurisdiction over this matter for the purposes of resolving any dispute alleging a breach of this
21 Stipulation and Agreement.

22 14. Each party acknowledges that he/she/it has been represented by and has relied
23 upon independent counsel in negotiating, preparing and entering into this Stipulation and
24 Agreement and that each party has had the contents of this Stipulation and Agreement fully
25 explained by counsel and that each party is fully aware of and understands all of the terms of the
26 Stipulation and Agreement and the legal consequences thereof. It is further acknowledged that

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1 the Parties have mutually participated in the drafting of this Stipulation and Agreement and it is
2 agreed that no provision herein shall be construed against any party hereto by virtue of the
3 drafting of this Stipulation and Agreement.

4 15. If any provision of this Stipulation and Agreement shall be held invalid, illegal, or
5 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in
6 any way be affected or impaired thereby.

7 16. This Stipulation and Agreement may be executed in counterparts by the parties
8 hereto, each of which shall be deemed an original, and which together shall constitute one and
9 the same instrument, having the same force and effect as if a single original had been executed by
10 all parties. The parties agree to accept facsimile transmission signatures and PDFs transmitted by
11 e-mail as though they were original signatures on this document.

12 17. The persons signing this Stipulation and Agreement warrant and represent that
13 they possess full authority to bind the persons on whose behalf they are signing to the terms of
14 this Stipulation and Agreement.

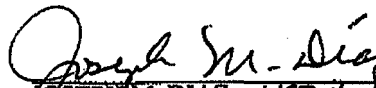
15 SO STIPULATED.

16 Respectfully submitted,

17
18 DATED: 11-02-09

19 
20 ISABEL VALENCIA-PEREZ
21 Plaintiff

22 DATED: 11-3-09

23 
24 JOSEPH M. DIAZ WSB #16170
25 Davies Pearson, P.C.
26 Attorney for Plaintiff


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m:AFGE Local 2913, NBPC/ALF-CIO To:Marriott Mesa C/O Malpezzi (14809649279)


00:54 11/04/09GMT-05 Pg 01-01

JOSEPH P. RUSSONIELLO
United States Attorney

DATED: 11/4/09


NEILL T. TSENG
Assistant United States Attorney
Attorneys for Defendants

DATED: 11/4/09


DARYL SCHERMERHORN
Defendant

DATED: NOVEMBER 3, 2009


STEVEN MALPEZZI
Defendant

APPROVED AND SO ORDERED.

DATED:

HON. RICARDO S. MARTINEZ
United States District Judge

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